SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 681

W. H. TOMPKINS COMPANY, Now TOMPKINS MOTOR LINES, INC.,

vs.

THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION

JURISDICTIONAL STATEMENT OF APPELLANT

To the Justices of the Supreme Court of the United States:

The appellant, in support of the jurisdiction of this Court to review the above entitled cause on appeal, respectfully represents:

I

This Court has jurisdiction to review the above entitled cause on appeal by virtue of the provisions of the following statutes of the United States, to wit: 38 Statutes 220, U. S. C. A. Title 28, paragraph 47, which provides that an appeal may be taken direct to the Supreme Court of the United States from an order denying an injunction against, or refusing or denying to set aside an order of the Interstate Commerce Commission made by a District Court.

II

The decree of the District Court denying the injunction, and refusing to set aside the order of the Interstate Commerce Commission and dismissing the suit was entered July 8, 1946, and the petition for appeal therefrom was filed on August 2, 1946.

III

That the appellant, W. H. Tompkins Company, now Tompkins Motor Lines, Inc., seasonably filed an application under the "grandfather clause" of the Federal Motor Carrier Act of 1935, in which it sought a certificate from the Interstate Commerce Commission authorizing the transportation of general commodities in radial service between Nashville, Tennessee and points and places within 15 miles thereof, and Murfreesboro, Tennessee on the one hand, and points and places in Georgia, North Carolina, South Carolina, those in Alabama on and east of U. S. Highway 31, and those in Florida on and north of Florida Highway 30. The Interstate Commerce Commission ruled that the applicant was only entitled to a certificate which would authorize transportation of only special commodities from Murfreesboro, Tennessee to points in Georgia, and a specified portion of Florida, over irregular routes, and special commodities from and to Nashville, Tennessee on the one hand and points in Georgia, North Carolina, South Carolina, and specified portion of Alabama and Florida on the other hand, over irregular routes, or about one fourth of the territory claimed by Applicant.

This suit was filed in the District Court to set aside said order and enjoin the enforcement thereof, on the grounds that the action of the Commission was arbitrary, and capricious and not according to law. No temporary restraining order was issued because the Commission, at the request

BLEED THROUGH – POOR COPY

of the Court, extended the effective date of the order denying part of Appellant's application, and the case was presented for final determination at the hearing for an interlocutory injunction, and the Interstate Commerce Commission later granted Appellant temporary authority to perform the operation which it denied to Appellant in its order of January 6, 1946.

The District Court affirmed the decision of the Commission, denied the injunction, and dismissed the bill. A copy of the decision of the District Court is appended hereto.

WHEREFORE we respectfully submit that this Court has jurisdiction of this appeal by virtue of 38 Statutes 220, U. S. C. A. Title 28, paragraph 47, as aforesaid.

Respectfully submitted,

JAMES W. WRAPE,
HAROLD G. HERNLY,
WRAPE & HERNLY,
1407 Sterick Bldg.,
Memphis, Tennessee,
Attorneys for Appellant.

BLEED THROUGH – POOR COPY
BLANK PAGE

DISTRICT COURT OF THE UNITED STATES,
FOR THE MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE DIVISION

No. 603 Civil

W. H. TOMPKINS COMPANY, Now Tompkins Motor Lines, Inc.,

Plaintiff,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Defendants

ORDER

Before Hicks, Circuit Judge, and Taylor and Davies, District Judges

The Bill of Complaint is dismissed upon the grounds and for the reasons set forth in the Findings of Fact and Conclusions of Law this day filed in this case.

Approved for Entry:

(S.) Xen Hicks,
United States Circuit Judge.
(S.) Geo. C. Taylor,
United States District Judge.
(S.) Elmer D. Davies,
United States District Judge.

MISSING PAGE NUMBER

BLEED THROUGH – POOR COPY
BLANK PAGE

DISTRICT COURT OF THE UNITED STATES,
FOR THE MIDDLE DISTRICT OF TENNESSEE,
NASHVILLE DIVISION

No. 603 Civil

W. H. TOMPKINS COMPANY, Now TOMPKINS MOTOR LINES, INC.,

Plaintiff,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Defendants

FINDINGS AND CONCLUSIONS

The above entitled action came on for hearing before the duly constituted statutory court on November 23, 1945, and was submitted upon the pleadings, exhibits, arguments, and briefs of counsel for plaintiff and defendants, and the Court enters its findings of fact and conclusions of law, as follows:

Findings of Fact

1. That the plaintiff is a corporation existing under the laws of the State of Tennessee with its principal place of business within the jurisdiction of this Court.

2. That the plaintiff is engaged in the business of a motor carrier, operating as a common carrier in interstate commerce within the states of Tennessee, North Carolina, South Carolina, Georgia, Florida, and Alabama, and has been so engaged long prior to June 1, 1935. That an application was filed by the plaintiff with the Interstate Commerce Commission on February 12, 1936, seeking a certificate of public convenience and necessity that would author-

MISSING PAGE NUMBER

ize it to continue its operations under the provisions of Section 206 (a), Motor Carrier Act of 1935. That this application was referred to an examiner of the Interstate Commerce Commission for hearing, and the examiner, in due course, served his recommended report and order, to which exceptions were filed by the plaintiff and other parties of interest in that hearing. That on May 29, 1941, Division 5 of the Interstate Commerce Commission served its report and order on this application. That the original application, all exhibits introduced at the hearing before the Examiner, a transcript of the proceedings before the Examiner, copies of his recommended report and order, and copies of all other orders entered by the Interstate Commerce Commission have been introduced as exhibits in this cause.

3. That the application, as originally filed, was amended and the plaintiff now seeks authority to continue certain operations over both regular and irregular routes, as follows:

Over regular routes, in the transportation of commodities generally:

Between Nashville, Tennessee, and Atlanta, Georgia, via U. S. Highway 41.

Over irregular routes, transporting general commodities:

Between Nashville, Tennessee, and points within 15 miles thereof, and Murfreesboro, Tennessee, on the one hand, and points and places in the state of North Carolina, South Carolina, Georgia, those in Alabama on and east of U. S. Highway 31, and those in Florida on and north of Florida State Highway No. 30.

4. That an order of the Interstate Commerce Commission, entered on May 29, 1941, provided for the issuance of a Certificate of Public Convenience and Necessity to the

BLEED THROUGH – POOR COPY

plaintiff, which would authorize the regular route service, as applied for, between Nashville, Tennessee, and Atlanta, Georgia, in the transportation of general commodities: and the transportation of certain specific commodities, over irregular routes as follows:

From Nashville, Tennessee, to points and places in North Carolina, South Carolina, Georgia, and that portion of Alabama on the east of U. S. Highway 31, and that part of Florida on and north of U. S. Highway 30, in the transportation of packing house and dairy products;

From Murfreesboro, Tennessee, to points and places in Georgia and Florida, on and north of U. S. Highway 30, in the transportation of dairy products;

And from points and places in North Carolina, South Carolina, Georgia, and that portion of Alabama on and east of U. S. Highway — (from the Tennessee-Alabama state line to Phenix City, Alabama) to Nashville, Tennessee, in the transportation of cotton factory products;

And from points and places in Florida, on and north of state Highway 30 to Nashville, Tennessee, in the transportation of canned and fresh fruit and canned fruit juices;

And from Jacksonville, Florida, to Nashville, Tennessee, in the transportation of coffee;

And from Elberton, Georgia, to Nashville, Tennessee, in the transportation of granite;

From Savannah and Port Wentworth, Georgia, to Nashville, Tennessee, in the transportation of sugar.

This order was set aside in part by this court on July 7, 1942, in cause No. 258, *W. H. Tompkins Company* v. *United States of America, et al.*

Thereafter, the Commission issued two reports on reconsideration, the last report dated January 6, 1945, being the order which plaintiff here seeks to set aside.

By said report and the order the Commission provided for the issuance of a Certificate of Public Convenience and Necessity to plaintiff which would authorize plaintiff to conduct the identical operations, with the identical restrictions, as was contained in the Commission order of July 1, 1943, which was heretofore set aside by this Court.

5. While the Commission found that the plaintiff had conducted common carrier operations within the area in which plaintiff sought to continue to operate, the plaintiff's operations are continued to be curtailed in the following way:

1. Plaintiff's right to serve the Metropolitan area surrounding Nashville, Tennessee, is denied;

2. Plaintiff is denied the right to transport all items of a general class between all points in its territory; and

3. Plaintiff is denied the right to transport all items authorized between all points.

Conclusions of Law

1. This Court has jurisdiction of this cause and of the parties thereto.

2. This Court's decision under date of July 7, 1942, in Civil Action No. 258, setting aside the Commission's order of May 29, 1941, and remanding the case to the Commission for findings in accordance with the statutory standards set forth in the decisions of the Supreme Court on March 2, 1942, in *United States* v. *Carolina Freight Carriers Corporation*, 315 U. S. 475, and *Howard Hall Company* v. *United States*, 315 U. S. 495, did not preclude the Commission from exercising its statutory function of considering, passing upon, and deciding upon plaintiff's application in accordance with applicable law and the evidence of record in the

BLEED THROUGH – POOR COPY

proceeding before the Commission; nor does the said decision of July 7, 1942, with respect to the Commission's said order of May 29, 1941, operate under the doctrine of *res judicata* as a determination that the Commission's subsequent order of January 6, 1945, is in any respect unlawful or invalid.

3. The Commission had jurisdiction over the proceedings wherein the said order of January 6, 1945, was made, and to make the said order. Said order was within the constitutional and statutory authority of the Commission, and was not arbitrary or based upon mistake of law or misapplication of the proper standards. Said order was made by the Commission upon substantial evidence of record and in accordance with the applicable law and was and is valid and lawful in all respects.

4. The relief prayed for in the complaint should be denied, and the complaint dismissed, plaintiff to pay the costs.

Judgment accordingly.

(S.) XEN HICKS,
United States Circuit Judge.
(S.) GEO. C. TAYLOR,
United States District Judge.

I am of the opinion that the Commission acted arbitrarily in denying to plaintiff the right to transport a general class of commodities between its radial bases and all points in its territory, and that the limitation placed on plaintiff's activities in this respect was without statutory sanction and is a denial of plaintiff's rights. It appears that the Commission improperly restricted plaintiff's actual operations and prior opportunities beyond the requirements of the statute, and, apparently, ignored the history of plaintiff's holding out as a carrier of general commodities in con-

junction with its actual operations, by limiting plaintiff's operations to a strict pattern of prior activities during a relatively small period of time, and did not take into consideration seasonal shipments, which action of the Commission is unwarranted and unsupported by the record in this case.

I am, therefore, of the opinion that the Commission has not properly applied the statutory standards prescribed by the Congress and the principles announced by the Supreme Court in the cases of *U. S.* v. *Carolina Carriers Corp.* (315 U. S. 475) and *Howard Hall Co., Inc.* v. *U. S. et al.* (315 U. S. 495). It appears that the order complained of is practically identical with the order set aside in part by this Court on July 7, 1942, and it does not appear that the Commission followed the mandate of this Court requiring it to apply the statutory standards and tests held by the Supreme Court to be essential to a valid order, or that the Commission applied any standards other than those applied in the first instance.

In my opinion, plaintiff's bill should be sustained, and the relief prayed for granted.

This 5th day of July, 1946.

(S.) ELMER D. DAVIES,
United States District Judge.

(7551)

BLEED THROUGH – POOR COPY